

MINORITY REPORT.

Mr. Branch, a member of the select committee of five, to whom was referred the President's message of the 3d of January, not concurring with the majority of the committee, by leave submits to the House the following views in relation to the bill to be entitled "An act further to provide for the collection of duties on imports."

The first section of the bill provides that, whenever, by reason of any unlawful combination or other obstruction, it shall become impracticable to collect the revenue at any port of entry, it shall be the duty of the President to make proclamation of the fact.

The second section provides that, if any vessel not engaged in the coastwise trade shall thereafter attempt to enter such port, it shall be seized by the revenue officers, "and the master or other person having the charge or command of such ship or vessel shall forfeit, for every such neglect, refusal, [to exhibit his manifest,] or offence, the sum of five hundred dollars, in addition to the sum of five hundred dollars imposed by section twenty-six of the act of March 2, 1799; and such ship or vessel, together with her tackle, furniture, apparel, and cargo, shall be subject to seizure and forfeiture."

The third section imposes the same penalties and forfeitures on master and owner of any vessel which shall depart to a foreign port or place without delivering a manifest and obtaining a clearance from the customs officer.

The fourth section authorizes the taking of such vessel into any port of entry in the United States, and confers on the circuit or district court of the district in which such port of entry is situated "the same power and jurisdiction over said ship or vessel, tackle, furniture, apparel, or cargo, as if the same had been seized within the collection district into which the said ship or vessel, tackle, furniture, apparel, or cargo shall be so taken."

The fifth section authorizes the President to use the vessels of the navy in aid of revenue cutters in executing this law.

The sixth section gives to the Secretary of the Treasury the same power to mitigate or remit penalties as he has in reference to others of a the similar character under existing laws.

The seventh section provides that, whenever the President shall issue his proclamation declaring that the obstruction in any port has ceased, then this act to be inoperative as to that port.

It is apparent, on the most cursory reading of the bill, that the title does not correctly set forth its character and objects. The object, as declared in the title, is "to provide for the collection of duties on imports," and the means adopted in the body of the bill is preventing any goods from being imported which, by law, are subject to pay duties. There is so obvious an incompatibility between the proposed ends and the chosen means, that we may well assign to the bill an intent not named in the title.

It is one of a system of measures by which it is intended to punish certain States for asserting and endeavoring to maintain their independence, and to coerce them into obedience to the federal authority.

Its provisions are war—cruel war—upon the citizens of the seceding States, and must be so treated, especially in connexion with other measures constituting a complete system of coercion and conquest which it is proposed by the majority to enact.

Its means are to blockade their ports, and render unavailable to them even the limited facilities nature has given to those States for trade and intercourse with the rest of the world.

In modern times, and amongst Christian nations, it is an established maxim that a belligerent may inflict the largest amount of injury on the enemy nation, but must impose the least amount of distress on private individuals. It is a beneficent maxim, alike dictated by chivalry and by humanity. During the war of the revolution our forefathers were admitted to be rebels, and did not deny that their rebellion, if unsuccessful, would be treason. But private citizens engaged in peaceful avocations were not warred upon, even whilst their homesteads were in possession of British troops. So again in the war of 1812, large portions of our territory were invaded by the enemy's troops, but no attempt was made to ruin or distress private citizens. It is to be left to the government of the federal Union to war upon a portion of the States of the Union, and to subject them to its authority, by inflicting ruin and distress upon private citizens, whilst carefully placing itself out of reach of guns, sabres, and other usual and legitimate weapons of civilized warfare.

Other nations discriminate between friends and enemies, even in an enemy's country. We alone are to wage indiscriminate war upon friend and foe, dealing out to the most active promoter of secession, and to the most devoted friend of the Union, equal measures of our vengeance. Nor is this all. If South Carolina is rebellious, large portions of Tennessee and North Carolina, whose foreign supplies are derived through Charleston, must suffer equally with South Carolina; and if Louisiana refuses to submit to federal authority, the loyal States on the Upper Mississippi and its tributaries must pay the penalty when New Orleans is blockaded.

To the United States of America belongs the distinguished honor of having propounded to the nations of the world, as a new article in the international code, that private property on the high seas, not contraband of war, shall no longer be subject to capture. Shall it be reserved for what remains of that once glorious confederacy to inculcate by its example that war is to be confined to invading private property, and that nations are to be reduced by distressing individuals, and destroying private fortunes, whilst no attacks are made on the national organization?

Already we may see foreshadowed in the proposed measure some of the barbarities and monstrous horrors of civil war.

It is pertinent to inquire whether the proposed commercial arrangements will probably inflict such wide-spread ruin and such unbearable distress on the citizens of the offending States as to reduce them to subjection.

This depends on circumstances, about which we are not fully informed.

I. If it is true, as alleged by well-informed persons at the north, that the secession movement has been originated and pushed forward at the south by reckless adventurers who have no property and but little stake in society, it is evident that a war upon property and domestic comforts will not reach them, but will only add to the sufferings of those who, as is alleged, are already the victims of an excitement they cannot control, and are afraid to resist. On this theory the remedy will tend to aggravate the disease by increasing the disorders in society and completing the destruction of values by which reckless adventurers may profit.

II. The bill sedulously guards against exportations from the infected ports to foreign countries; and this is the feature on which most reliance is placed for distressing and subduing the seceding States. To render the blockade effectual, the revenue cutters are authorized to examine vessels and cargoes going out of those ports, and forfeitures are inflicted for violation of the law. This system of police may be practiced towards vessels under our own flag wherever they may be overhauled, but except within a marine league of our own shores, we cannot visit or search any vessel sailing under a foreign flag so as to ascertain whether she has on board contraband cargo, or is engaged in a contraband voyage. This is the doctrine as to the right of visit and search which we ourselves have insisted on and fought for, and caused to be incorporated into the law of nations, at least so far as we are concerned; and foreign nations will not fail to hold us to it when it will operate favorably to them. By employing vessels under foreign flags to carry their cotton, the citizens of the beleaguered States will avoid all the penalties of the law, unless the vessels should be overhauled within three miles of the shore. On the low, sandy coasts of the southern States the shallows extend so far out seaward that a belt of three miles affords very insecure cruising ground for even the smallest sea-going vessel; and favored by the vicissitudes of wind and weather, and with the advantage of being able to choose their time of sailing, few vessels would be overhauled and captured within that distance. The principal effect of the law might be to transfer the profits of carrying the cotton crop from American to British ship-owners.

This is not the sole embarrassment we may encounter. Nearly five millions of souls in the British Isles are directly and indirectly dependent on a regular and sufficient supply of raw cotton for the means of subsistence. Cut off this supply, and the British government must feed or fight much the larger portion of this five millions. It may reasonably be expected that it will connive at any evasion of the provisions of a law the enforcement of which would entail upon its subjects such serious evils, and her own cruisers would probably have orders to pass merchantmen laden with cotton, whilst the cruisers of other nations would have no right to go on board, and consequently no means of ascertaining whether they are provided with clearance papers or not.

But Great Britain might not be content to rely for a commodity so essential to her on the successful evasion of our laws by merchantmen,

and might insist that we abide by another great principle of international law to which this government is fully committed, namely: that a blockade to be respected must be maintained by an adequate force. If she should do so, we could not contend that a few revenue cutters, with an armament on each scarcely more formidable than a few rifles of approved construction, is a force adequate to blockade two thousand miles of sea-coast, and to deny to the world its supply of raw cotton.

Not the least noticeable feature of the policy which this bill is to inaugurate is, that whilst the commerce of one portion of the States is nursed and fostered in every possible mode by bounties and special favors, that of another portion is to be utterly annihilated. The right to raise a revenue by imposing duties on imports is made to yield rich protection to the industry of favored States, so that to them the commercial and revenue powers of the federal government are as genial showers, blessing them with wealth, prosperity, and happiness: the same powers to the other States are to be a poisonous sirocco, drying up the fountains from which they draw their subsistence, blasting their prosperity, and consuming the fruits of their toil. Northern legislatures may pass "personal liberty laws," nullifying the laws of Congress; northern governors may refuse, in palpable and acknowledged violation of the Constitution, "to deliver up on demand" fugitives from justice; and northern mobs may with impunity rescue fugitives from labor out of the hands of officers bearing the commission of the United States: in the midst of it all, every change in the revenue laws adds to the favors and bounties heaped upon the offending States. But let a southern State murmur discontent or raise an arm to resist, and forthwith the same revenue and commercial powers are found to be a whip of scorpions, with which they may be lashed into silent acquiescence and dutiful obedience.

Having commented on the injustice and impolicy of the proposed bill, it will now be considered with reference to its constitutional bearings.

Has Congress power to coerce a State, or, to state the question with more precision and more in the terms of the bill, has the Constitution conferred on Congress the right to carry on hostilities, either legislative or military, against a State, or all the people of a State, because obstructions and combinations, however formidable, prevent the execution of the laws in that State?

The question will be considered on the hypothesis most favorable to the existence of the right, that is to say, on the hypothesis that the State is still a member of the confederacy. If the State has been absolved from its federal obligations, and its citizens released from their obligations to obey its laws, by a "palpable, deliberate, and dangerous infraction" of the Constitution, the question, of course, does not admit of argument.

The undersigned has not heard any one contend that it is the right of the federal government to make war upon a State. Even in a case in which the Constitution, or Congress in pursuance of the Constitution, imposes a positive duty on a State, and the State neglects or refuses to perform it, no one pretends that Congress can march an army into the State or blockade its ports to enforce obedience, nor can

the same thing be done if a State does that which the Constitution expressly forbids.

If a State cannot be held to this responsibility for its own acts of disobedience, much less can it be held to it for the acts of disobedience of its individual citizens.

But it is contended by those who hold that the federal bond of union is indissoluble, and who do not admit that a State can, in any case, declare its citizens absolved from their obligation to obey, that the laws must be enforced, under all circumstances, and by whatever amount of force may be necessary, against each and every citizen. If an individual commits an infraction of a federal law, this class of persons would not allow him to escape on a plea that he is not bound to obey, but would proceed to try and punish him as though he had not claimed absolution. But before proceeding to punishment, they would give him the benefit of all the provisions of the Constitution, especially of those incorporated into it from *Magna Charta*, and constituting the boast and bulwark of Anglo-Saxon liberty.

In this theory of the Constitution and of the nature of the government the bill proposed by the committee can find no sanction. So far from being in execution of the laws of the Union, it abrogates those very laws the enforcement of which is its professed object. Instead of compelling individuals to pay duties on imports, it puts it out of the power of those who wish to pay duties to do so. By its enactment into a law large numbers of persons, including those who are willing to pay all the duties exacted by the government, will be subjected to direful calamities; their property will be wasted and their means of subsistence will be destroyed, not for any refusal on their part to obey the law, but because of a governmental policy adopted by their State, over which they had no control. Charged with no violation of law, they will be summarily punished for disobedience, without "public trial by an impartial jury," without "being informed of the nature and cause of the accusation," without "being confronted with the witnesses against them," without "having compulsory process for obtaining witnesses in their favor," and without "having the assistance of counsel for their defence."

By its operation millions of dollars of the property of peaceful and industrious citizens. against whom no charge is made, and to whom no opportunity will be afforded to show the alacrity with which they will obey all laws, will be stricken down and destroyed. And yet the Constitution guarantees to every citizen the right to trial by jury "where the value in controversy shall exceed twenty dollars."

Thus the blow, which can be legitimately aimed only at the guilty, falls with equal weight upon the innocent, and both guilty and innocent are punished without allowing to them the benefit of those safeguards which the Constitution secures even to the vilest malefactor. In the execution of the laws hostile force can only be used against those individuals who will not otherwise obey them. Nine hundred and ninety of a thousand citizens in a given community may willingly obey the law, and force can only be used against the one who disobeys; nor can he be punished otherwise than according to the law and the Constitution. So, if but one obeys, no force can be used against him;

if all disobey, all may be forced, not in the aggregate, but each to the discharge of his own individual obligation. They are not guarantors for each other, nor is the State a guarantor for the good conduct in this regard of all or any portion of its citizens.

It seems clear, then, that, under the power to provide means "to execute the laws of the Union," Congress cannot assume the right to wage hostilities against a State, or against all the people of a State in the aggregate.

Can it do so under the power "to suppress insurrection?"

Nothing would seem to be clearer, nor would any proposition receive more universal assent, than that a State in its corporate or aggregate political capacity cannot be guilty of insurrection any more than it can be guilty of treason, felony, or riot. All or a portion of its citizens may be. Some of its citizens, in conjunction with some of the citizens of another State, may be in insurrection. In either such case the government may suppress it, not by assailing the State or States and all their citizens, for neither State lines nor State citizenship could be noticed, but by seizing and punishing the insurgents according to the law and the Constitution. If the object is to suppress the insurrection by dispersing the insurgents, it must be done by an attack on them, and not by a blind and ruthless assault upon all the people of the State or neighborhood, for no principle of law or of justice will permit the innocent and the guilty to be confounded.

The latter remedy cannot be used even against individuals except whilst they are *in flagrante delicto*, and for the purpose of dispersing. Punishments can only be inflicted after civil process issued, and after due prosecution according to law. To adopt the summary process against a State on pretence that it is in insurrection against a law which has been repealed, would be absurd, and might be treated as a nullity if it did not involve civil war in its train.

In as far, then, as the bill is an attempt to coerce a State or States, to punish whole communities for the delinquencies of individuals, as a means of compelling States to relinquish their purposes of secession from the Union, it is believed to be violative of the Constitution.

The Constitution gives to Congress power to regulate commerce, but it may be questioned whether that carries with it a right to destroy commerce, or to prohibit it in a portion of the States. It is not doubted that Congress has a right to establish and to abolish ports of entry, and so long as this right is exercised in good faith, its legitimacy cannot be successfully questioned. But when it is used confessedly not to regulate, but to destroy, so that there shall be none to regulate, it is a violation of the spirit and intent and of the very letter of the Constitution, as much so as it would be for Congress to enact under its power "to coin money and regulate the value thereof," that in certain States or in certain towns, on their being proclaimed rebellious by the President, the use of money should be forbidden to all the inhabitants.

Again: Art. 1, sec. 9, of the Constitution, says: "No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." It would seem to an unsophisticated mind that to abolish all the ports of entry in a State,

and to subject its citizens to heavy penalties for attempting to engage in commerce, are certainly acts that give a preference to ports of other States over those of the proscribed State. But it is said this bill is general and applicable alike to all the States ; and that even if it was applicable to only one State it would not violate the Constitution, because it does not require all the ports to be closed in that State. To this it may be replied, that the bill is adroitly framed so as to appear to be general, but in reality it is not so. It does not operate at all except on a proclamation by the President, and it rests entirely with him to say where it shall operate, as well as when and how long. Under its provisions he may close up and blockade all the ports in one State without closing any others. So that, under the very best construction that can be placed on it, it is an attempt to authorize him to do what the Constitution says shall not be done.

Still more clearly is the other clause of the same section violated—"nor shall vessels bound to and from one State be obliged to enter, clear, and pay duties in another." For after all the ports of entry in Georgia have been closed, if a vessel shall sail from the West Indies with a cargo of molasses bound to Savannah, she cannot go into Savannah river without having first entered and paid duties, and thence cleared coastwise in some State whose ports have not been closed. If she refuses to do that which the Constitution says shall not be required of any vessel, the captain and his vessel will be seized and carried off perhaps to Maine, where he will be fined a thousand dollars, and his vessel and cargo will be confiscated.

Again : article 3, section 2, of the Constitution says : "The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held *in the State* where the said crimes shall have been committed." And the sixth amendment to the Constitution says : "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury *of the State and district wherein the crime shall have been committed.*" *

Under the provisions of the bill, a vessel seized within the district of Georgia, that is, within three miles of its coast, may be carried, with its captain and cargo, into any other State for trial and condemnation. It is said the offence is not technically "a crime," and the proceeding is not "a criminal prosecution." Unacquainted with the technicalities of the law, the undersigned is not prepared to controvert this assertion ; but he respectfully submits that, if the captain has not been guilty of such a crime as entitles him to the safeguard guaranteed by the Constitution to petty offenders, he ought not to be subjected to so severe a penalty as a fine of a thousand dollars and forfeiture of his vessel and cargo, however valuable. The punishment is disproportioned to the offence. If he has been guilty of a crime, he is protected by the Constitution against being tried out of the district ; if he has not been guilty of a crime, the pains and penalties of the bill are excessive.

* This is believed to be the only instance of a repetition in the Constitution—a proof at once of the accuracy of the framers, and of their devotion to the great safeguard of trial by jury of the vicinage.

So inconsistent with the nature of our confederacy is the effort to substitute force for affection as the bond of Union, that every attempt to frame measures of coercion must equally with this encounter grave and manifold constitutional difficulties.

The undersigned is aware that, in recommending this bill in preference to one providing for the immediate use of military force within the harbors of the seceding States, the committee were mainly actuated by a desire to postpone as long as possible an actual collision of military forces. But war will be the inevitable consequence of the passage of this bill; and it is suitable that the House, in deliberating on it, should take into its consideration the probable consequences of war between the federal government and a large portion of the States. No human eye can take in all the scenes of that bloody drama, which will lay waste this fairest home of freedom, and blot out all traces of the contentment, happiness, and prosperity which have been developed in an unparalleled degree under the mild and peaceful rule of a government of affection. But some of its immediate and least doubtful political consequences may properly be adverted to.

In the first place, what object will this government have in view in entering upon and prosecuting the war? At what point will it be willing to sheathe the sword, arrest hostilities on land and sea, and repeal hostile legislation; would it be when the seceding States consent to assume the payment of all dues to the federal government which their citizens would become liable to pay under existing laws? If so, Congress had better tender that to them in advance as the alternative of the sword. When, in 1813 and again in 1815, Congress was driven by the necessities of war to levy an odious and unpopular tax, which, as former experience taught them, would lead to popular tumult if not insurrection, authority was given for the States respectfully to assume the portion which would be payable by their citizens. If securing the revenue is the sole object of this war, and its prosecution is to cease when that object is attained, why not make the offer before the war commences?

Will you prosecute it until you can get persons to accept the offices of judge, marshal, district attorney, collector of customs, &c.? He who is brave enough to accept federal office in the seceding States, is too brave to bow under the federal lash. It will be easier to fill these offices by persuasion before, than by compulsion after, the war begins. Will you not cease hostilities until the seceding States consent to send senators and representatives to Congress? It will be easier to induce them to that course by conciliation—by removing grievances and all grounds of apprehension for their safety in the Union—than by waging war.

Dissolution would inevitably follow war. What, then, is to be gained by war, except to enable one portion of the people of the Union to gratify a feeling of hatred and revenge towards another portion.

The cries that the "Union must be preserved at all hazards" and that "the honor of the flag must be maintained," do not even gloss over the real actuating motive of those who clamor for war, though many honorable and patriotic individuals are undoubtedly blinded

into the belief that such are their objects, and that their means are conducive to their ends.

The Union cannot be preserved by civil war, nor can the honor of the flag be added to or maintained on the bloody fields of fraternal slaughter.

One more of the probable consequences ought not to be overlooked.

At present six States have withdrawn from the Union, and the expectation is entertained that only two more will at present pursue the same course. There are seven other States having the same interest in the institution of slavery, that are only restrained from severing their connexion with the Union from a lingering hope that the non-slaveholding States will take effectual steps to render them secure, and to induce the return of those which have seceded. They are now discharging faithfully, but in sadness, all the duties imposed on them by the federal Constitution. Whilst they remain in the Union they will fight its battles against all mankind and scrupulously obey all its laws. But the undersigned feels justified in saying that not one of those States will furnish men or money, nor in any other manner aid, directly or indirectly, in waging war upon their brothers with whom they sympathize even in their errors. Whenever the laws of the Union impose that obligation, they will withdraw from the Union, and throw off the obligation of its laws. Not an arm will they raise, nor a blow strike, to impose the yoke or inflict vengeance on those who have been harassed and persecuted for thirty years by a merciless and intermeddling fanaticism until at length they have been driven into revolution.

The objects for which the Union was formed, as they are set forth in the preamble to the Constitution, were—

1. To form a more perfect union than had previously existed.
2. To establish justice.
3. To insure domestic tranquillity.
4. To provide for the common defence.
5. To promote the general welfare.
6. To secure the blessings of liberty to ourselves and our posterity.

Civil war cannot conduce to one of those ends, nor can it coexist with even a semblance of regard to those great objects. When Congress so far forgets the great and beneficent objects for which it was created as to endeavor to hurl one half of the Union against the other half in bloody conflict, its commands will not be obeyed; the obligations of the Union will be promptly and sternly thrown off. The responsibility will surely rest on those who command so unnatural an act; but Delaware, Maryland, Virginia, North Carolina, Tennessee, Kentucky, and Missouri, with seven millions of population, will take upon themselves all the responsibility incident to the occasion. In the name of christianity and civilization they will protest against it, and, if necessary, with arms in their hands, and with such assistance as they can obtain from other States, will forbid the foul and infamous deed.

It may be asked. Are the laws of the Union to be set at naught, and its authority denied? When only private individuals assume to disregard them, they can and ought to be enforced. The government

has always been strong enough in physical forces and in the affections of its citizens to execute them when only opposed by individuals. Wide-spread discontent and formidable combinations have been overcome without the shedding of blood by an armed soldiery.

Similar difficulties could now be overcome in a similar manner. It is a striking fact that up to the moment of secession the laws of the United States have been scrupulously and punctually obeyed in every seceding State. No tendency to relapse into anarchy, or disposition to escape from the restraints of law, has been anywhere exhibited.

But when the resistance proceeds from States—not a single State, but an entire class of States—and the resistance is not to a law, but to the whole authority of government, the difficulty not only becomes greater in magnitude, but the nature of the case is altogether changed. It ceases to be a criminal misdemeanor, and becomes a political revolution.

Constables with writs can deal with the one, whilst only soldiers with the implements of war can overcome the other. Our government is amply provided for dealing with individual malefactors, but as the Constitution does not recognize the right of a State to secede, so it has made no provision for putting down revolution by force. If on the one side there is no right to do, there is on the other equally no right to prevent.

It ought not to be forgotten that the existing government was formed by the voluntary secession of the States from the old, and their voluntary accession to the new, confederacy. North Carolina and Rhode Island preferred the old to the new, and opposed the secession of the other members. The 13th article of confederation had expressly declared that “the union shall be perpetual,” and the framers had affixed their signatures to this declaration: “And we do further solemnly plight and engage the faith of our respective constituents * * that the articles thereof shall be inviolably observed by the States we respectively represent, and that the union shall be perpetual.” But the States had learned from experience that a change was necessary to their prosperity and happiness, and they made the change. State after State seceded, and the new government was put into operation, leaving North Carolina and Rhode Island alone clinging to the confederation. It never occurred to those States that they had a right to raise armies in the name of the confederacy, and make war under its flag against the seceding States. Least of all was it suspected that George Washington, president, and James Madison, Benjamin Franklin, Alexander Hamilton, Rufus King, and their compatriots, members of the convention which framed the present Constitution, were guilty of treason, although the articles of confederation, as has been seen, expressly negatived any right of secession.

The undersigned would rejoice to see the seceding States return of their own accord into the bosom of the confederacy. He does not doubt that they would joyfully do so if they could be assured of peace and security under its wing. He therefore respectfully submits that the remaining few days of the session can be better devoted to perfecting plans of adjustment and pacification than to organizing civil

war and devising ingenious schemes for distressing and maltreating the citizens of the seceding States.

To give any hope either of a satisfactory adjustment or of a peaceful separation, we must refrain from war, and from whatever will inevitably lead to war; and as the undersigned is convinced that the proposed bill will be the most irritating form of hostilities, he cannot concur with the committee in recommending its passage.

L. O'B. BRANCH.

